

Superseded 5/10/2016

38-11-204 Claims against the fund -- Requirement to make a claim -- Qualifications to receive compensation -- Qualifications to receive a certificate of compliance.

- (1) To claim recovery from the fund a person shall:
 - (a) meet the requirements of Subsection (4) or (6);
 - (b) pay an application fee determined by the division under Section 63J-1-504; and
 - (c) file with the division a completed application on a form provided by the division accompanied by supporting documents establishing:
 - (i) that the person meets the requirements of Subsection (4) or (6);
 - (ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence; and
 - (iii) the basis for the claim.
- (2) To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:
 - (a) from the date the judgment required by Subsection (4)(d) is entered;
 - (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or
 - (c) from the date the laborer, trying to recover from the fund, completed the laborer's qualified services.
- (3) The issuance of a certificate of compliance is governed by Section 38-11-110.
- (4) To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:
 - (a)
 - (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act:
 - (A) for the performance of qualified services;
 - (B) to obtain the performance of qualified services by others; or
 - (C) for the supervision of the performance by others of qualified services in construction on that residence;
 - (ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or
 - (iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built housing retailer for the purchase of an owner-occupied residence;
 - (b) the owner has paid in full the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract;
 - (c)
 - (i) the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to payment under an agreement with that original contractor or real estate developer licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for services performed or materials supplied by the qualified beneficiary;

- (ii) a subcontractor who contracts with the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier; or
 - (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier;
- (d)
- (i) unless precluded from doing so by the nonpaying party's bankruptcy filing within the applicable time, the qualified beneficiary filed an action against the nonpaying party to recover money owed to the qualified beneficiary within the earlier of:
 - (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1a-502; or
 - (B) 270 days from the completion of the original contract pursuant to Subsection 38-1a-502(1);
 - (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who failed to pay the qualified beneficiary under an agreement to provide qualified services for construction of that owner-occupied residence;
 - (iii)
 - (A) the qualified beneficiary has:
 - (I) obtained from a court of competent jurisdiction the issuance of an order requiring the judgment debtor, or if a corporation any officer of the corporation, to appear before the court at a specified time and place to answer concerning the debtor's or corporation's property;
 - (II) received return of service of the order from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b); and
 - (III) made reasonable efforts to obtain asset information from the supplemental proceedings; and
 - (B) if assets subject to execution are discovered as a result of the order required under Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution from a court of competent jurisdiction; or
 - (iv) the qualified beneficiary timely filed a proof of claim where permitted in the bankruptcy action, if the nonpaying party has filed bankruptcy;
 - (e) the qualified beneficiary is not entitled to reimbursement from any other person; and
 - (f) the qualified beneficiary provided qualified services to a contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.
- (5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified beneficiary is prevented from compliance because the nonpaying party files bankruptcy.
- (6) To recover from the fund a laborer shall:
- (a) establish that the laborer has not been paid wages due for the work performed at the site of a construction on an owner-occupied residence; and
 - (b) provide any supporting documents or information required by rule by the division.
- (7) A fee determined by the division under Section 63J-1-504 shall be deducted from any recovery from the fund received by a laborer.
- (8) The requirements of Subsections (4)(a) and (b) may be satisfied if an owner or agent of the owner establishes to the satisfaction of the director that the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor who:

- (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but was solely or partly owned by an individual who was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or
 - (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.
- (9) The director shall have equitable power to determine if the requirements of Subsections (4) (a) and (b) have been met, but any decision by the director under this chapter shall not alter or have any effect on any other decision by the division under Title 58, Occupations and Professions.